

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

ROYSTON L. GAZAWAY,
Petitioner,

v.

Commissioner BRIAN OWENS,
Respondent.

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No. 5:14-cv-33 (MTT) (CHW)

**Proceedings Under 28 U.S.C. § 2254
Before the U.S. Magistrate Judge**

RECOMMENDATION

Before the Court is Petitioner Royston L. Gazaway's motion to voluntarily dismiss his unexhausted Section 2254 habeas petition. (Doc. 13). Petitioner, an inmate at Wheeler Correctional Facility, claims that he was unfairly denied parole in November 2012. (Docs. 1, 12-1). Respondent, Brian Owens, has filed a motion to dismiss Petitioner's petition for both failure to exhaust and untimeliness. (Doc. 9). According to Respondent, "[t]he proper forum in Georgia to challenge the denial of parole . . . is to file a petition for a writ of mandamus." (Doc. 9-1, p. 7). Respondent claims that Petitioner failed to file such a petition prior to filing the instant Section 2254 habeas petition, and Respondent also claims that Petitioner filed the instant Section 2254 petition after the expiration of AEDPA's one-year limitations period. (*Id.*).

Petitioner now informs the Court that he has filed a petition for writ of mandamus in the Superior Court of Fulton County, and he asks that this Court dismiss the instant Section 2254 petition so that Petitioner may exhaust his state remedies. (Doc. 13). It is **RECOMMENDED** that the Court grant Petitioner's motion and dismiss the instant petition without prejudice.

SO RECOMMENDED, this 4th day of June, 2014.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge